

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES M. MALARIK,)	
)	
Petitioner,)	Civil Action No. 07-393
)	
v.)	Judge Conti
)	Magistrate Judge Caiazza
ALLEGHENY COUNTY, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

James M. Malarik's Petition for Writ of Habeas Corpus was received by the Clerk of Court on March 27, 2007, and was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on April 4, 2007, recommended that the Petition for Writ of Habeas Corpus filed by Petitioner Malarik be dismissed sua sponte for failure of Petitioner to exhaust available state remedies. The Petitioner filed objections on April 16, 2007 (Doc. 6) in which he recognized that the convictions in issue are presently on appeal to the Superior Court of Pennsylvania. On the record before the court, it is clear that petitioner has not exhausted available state remedies.

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 24th day of May, 2007,

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus filed by James M. Malarik is dismissed.

The Report and Recommendation of Magistrate Judge Caiazza (Doc. 3) is adopted as the opinion of the court.

s/Joy F. Conti
Joy F. Conti
United States District Judge

cc:
JAMES M. MALARIK
#130218
Allegheny County Prison
950 Second Avenue
Pittsburgh, PA 15219